Grievances & Appeals

CPAC Brown Bag
15 May 2001
Jim Baugh & Steve Rayle

Avenues of Redress
Typical Employee Options

- Equal Employment Opportunity (EEO) Complaint
  - allegations of discrimination
- DoD Administrative Grievance System (AGS)
  - for non-bargaining unit employees to grieve working conditions, adverse actions, work relationships, application of personnel policies, etc.
- Negotiated Grievance Procedure
  - for bargaining unit employees to grieve issues specified in the negotiated agreement
- Merit Systems Protection Board (MSPB) Appeal
  - for non-bargaining and, in some cases, bargaining unit employees to appeal significant personnel actions such as RIF, adverse actions (over 14 days), etc.

Negotiated Grievance Procedure (NGP)

- The NGP is the exclusive procedure for resolving complaints raised by bargaining unit employees on matters covered by the labor agreement. The NGP leads to binding arbitration.
- Key references for NGP:
  - 5 USC 71
  - The applicable LMA.
- Covers all bargaining unit members. Bargaining unit employees may be represented by the union or may represent themselves. However, the union has the right to be present during grievance proceedings.
- The NGP excludes grievances involving:
  - prohibited political activities
  - retirement, life insurance, or health insurance
  - suspensions or removals for reasons related to national security
  - any examination, certification, or appointment
  - position classification that doesn't result in a grade or pay reduction
  - any other matter excluded by mutual agreement of the parties

Administrative Grievance System (AGS)

- REFERENCES:
  - 1. PART 771, 5 CFR
  - 2. CHAPTER 71, 5 USC
  - 3. DoD 1400.25M, S-42

- WHAT IS IT?
  A Forum for fair, equitable and timely review and resolution of disputes on employment-related matters arising within DoD.

- GRIEVANCE:
  A request for personal relief by employee or group of employees in a matter of concern or dissatisfaction subject to management control.

GRIEVANCE POLICY
EMPLOYEES HAVE THE RIGHT TO:

- Be treated fairly and equitably
- Present grievances
- A prompt consideration and fair decision
- Have a representative
- Be free from restraint, coercion, discrimination, or reprisal

AGS EXCLUSIONS

- Content - Regulations & Policies
- On matter subject to negotiated agreement or other appeal body
- Non-selection - Promotion
- “Preliminary” Warning
- Termination - Probationary situations
- Substance - Performance standards/work objectives
- Incentive Awards

AGS - The Players

- 1. Employee
- 2. Employee Rep
- 3. Supervisor(s)
- 4. Fact-Finder
- 5. Hearing Official
- 6. Deciding Official

AGS EMPLOYEE COVERAGE

- NON-BARGAINING UNIT EMPLOYEES
- BARGAINING UNIT EMPLOYEES WHERE:
  - a. no negotiated grievance procedure is in effect
  - b. Negotiated grievance procedure excludes matter at issue

Representation

- Accompanied, represented, and advised
- His/Her own choosing
- Disallowance if:
  - Conflict of interest/position
  - Conflict with priority needs of agency
  - Unreasonable cost to agency

Official Time

- For Grievant and Representative

  To present grievance

- Optional for “Preparation”

  “Reasonable Amount”

Problem Solving Process (PSP)

- Informal presentation to management (grievant's option)
- Normally within 15 days of event creating dissatisfaction
- If presented in writing, response must be in writing
- Use of neutral (such as mediator) encouraged
- Response completed within 15 days
- If not resolved, advised of proper forum (if any)

Formal Grievance Procedure

- Filed in writing with deciding official:
  - Within 15 days of conclusion of PSP (if used)
    OR
  - Within 15 days of event or when became aware of it
- Deciding Official Determines:
  - Investigative method
  - Choice of grievant's representative
  - Amount of official time for representative and grievant

DECISION PROCEDURE

- Written decision within 60 days, but can be extended to 90 days and beyond if settlement is possible
- Grievant can ask for decision by next higher mgmt level, if no decision within 90 days
- Only cancellation of grievance invokes right to review by next higher mgmt level

Why Are Grievances Costly?

- Take up valuable time
- Often point to other underlying problems not being dealt with
- Are expensive due to need for outside experts
- Damage morale and productivity
- Pass control of issues to outsiders

What Can Be Done?

- Have parties to the dispute maintain control of the resolution
- Allow people to develop innovative solutions
- Develop win/win outcomes
- Improve post-dispute working relationships
- Respond quickly to work place problems

Merit Systems Protection Board

- Independent Government Agency
- Operates like a court
- Ensures agency actions against employees and based on merit principles
- Adjudicates employee appeals

Who Can Appeal To MSPB?

- <u>COMPETITIVE SERVICE</u>

  - Not serving a probationary period

  - Completed 1 year of service under appointment scheduled to last more than 1 year

Who Can Appeal To MSPB?

- EXCEPTED SERVICE
  - Preference eligible: Completed 1 year of continuous service
  - Non-preference eligible: Non-probationary pending conversion to competitive service
  - Non-preference eligible: Completed 2 years of service under appointment scheduled to last more than 2 years

APPEAL PROCESS

- Appellant files petition for appeal
- Agency files initial response
- Hearing (At request of appellant)
  - Yes - Discovery
  - No - Judge issues decision

- Decision

Advisory Role of MER

- Provide guidance to managers on their response options in grievances
- Advise manages or appropriate investigative methods
- Assist and advise on utilization of different conflict resolution methods
- Provide information to employees on the procedures and requirements of the AGS and appeals process
- Advise Deciding Official on relative merits of the case and procedural issues
- Whenever feasible, facilitate informal and early resolution with all parties